

ESTTA Tracking number: **ESTTA287504**

Filing date: **06/03/2009**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92050960
Party	Defendant Spin Master Ltd.
Correspondence Address	Michael T. Murphy K&L Gates LLP P.O. Box 1135 Chicago, IL 60690 UNITED STATES chicago.trademarks@klgates.com
Submission	Other Motions/Papers
Filer's Name	Michael T. Murphy
Filer's e-mail	michael.murphy@klgates.com, chicago.trademarks@klgates.com, janice.hemphill@klgates.com
Signature	/Michael T. Murphy/
Date	06/03/2009
Attachments	Registrants Reply to Petitioners Opposition to Motion to Dismiss - Cancellation No 92050960.pdf ( 7 pages )(147876 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Trademark Registration No.  
2944406  
Trademark: S SPIN MASTER  
Registered: April 26, 2005

NSM Resources Corporation	)	
	)	
Petitioner,	)	Cancellation No. 92050960
	)	
v.	)	
	)	
Spin Master LTD.	)	
	)	
Registrant	)	

**REGISTRANT'S REPLY TO PETITIONER'S  
OPPOSITION TO MOTION TO DISMISS**

Registrant, Spin Master LTD. hereby replies to Petitioner's opposition to Registrant's Motion to Dismiss. Petitioner confirms there is no basis for the Cancellation proceeding as the motivations for filing the Petition pertain to an unrelated dispute, not the present S SPIN MASTER Registration No. 2,944,406.

As to service of Registrant's Motion to Dismiss, it is clear that Petitioner timely received notice of the Motion and its content as Petitioner called Registrant's attorney on May 29, 2009 to discuss the Motion and reiterate its demands for payment. Moreover, Petitioner has filed its opposition to the Motion early--within 11 days after the Motion was

filed. As such, there can be no prejudice to Petitioner. In any event, Registrant has mailed an additional service copy of the Motion to Petitioner on May 26, 2009 (Exhibit A).

Accordingly, Registrant requests that the Motion to Dismiss be granted.

Respectfully submitted,

s/Michael T. Murphy/s  
Michael T. Murphy  
K&L GATES LLP  
P.O. Box 1135  
Chicago, IL 60690  
Telephone: (202) 778-9176  
Facsimile: (312) 827-8185

**CERTIFICATE OF SERVICE**

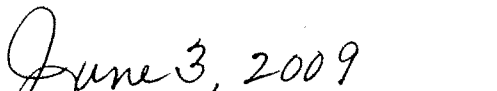
I hereby certify that a copy of the foregoing Registrant's Reply To Petitioner's Opposition To Motion To Dismiss was served this 3rd day of June 2009 in the following manner on:

**VIA U.S. FIRST CLASS MAIL**

Zane Murdock  
President  
NSM Resources Corporation  
P.O. Box 931162  
Los Angeles, CA 90093

I declare under the penalty of perjury that the foregoing is true and correct.

  
Janice V. Hemphill

  
Date

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Trademark Registration No.  
29444406  
Trademark: S SPIN MASTER  
Registered: April 26, 2005

NSM Resources Corporation	)	
	)	
Petitioner,	)	Cancellation No.: 92050960
	)	
v.	)	
	)	
Spin Master LTD.	)	
	)	
Registrant	)	

**MOTION TO DISMISS ON THE PLEADINGS**

Registrant, Spin Master LTD. hereby moves the Honorable Board to dismiss the present Cancellation on the grounds that the Petitioner alleges no statutory ground for cancellation and any allegation of likelihood of confusion between Petitioner's mark HUCK and Registrant's mark SPIN MASTER & Design must fail as a matter of law.

Petitioner in the second unnumbered paragraph of the Petition makes a vague allegation of damage but fails to state any statutory grounds for cancellation. In fact, numbered paragraph 2-5 makes clear that the filing of the petition is "pay back" for

Registrant's alleged failure to acknowledge Petitioner's purported rights in the unrelated trademark HUCK.

Even assuming that Petitioner's allegations can be construed as an allegation of likelihood of confusion under section 2(d) of the Trademark Act, the Petition must be dismissed as a matter of law as the trademarks HUCK and HUCK DOLL on one hand and SPIN MASTER on the other cannot be found under any set of facts to be confusingly similar. There is no similarity of sound, appearance, meaning or connotation – *not even a single letter* is in common between SPIN MASTER and HUCK. As such, there can be no likelihood of confusion as a matter of law between these marks even if the goods and services were absolutely identical, which they are not.

Furthermore, the basis for filing the Cancellation is puzzling as it makes no sense from the face of the petition, because Petitioner's true motivation is Registrant's refusal to pay ransom to Petitioner for use of its own trademarks. Petitioner has filed similar cases at the Board and elsewhere, as described by the Registrant in its motion to dismiss in Cancellation No. 92050732. In the above case, Petitioner sought to cancel Target registration No. 1340989-PRO SPIRIT again based on rights in the HUCK mark. As such, this filing is not just misguided, but another example of misuse of the cancellation procedures before the TTAB

Finally, and in the alternative, Petitioner fails to state a claim upon which relief can be granted as Petitioner fails to articulate any rights in a mark having any relevance to the present proceeding to provide standing to maintain the cancellation.

In view of the foregoing, Registrant respectfully requests that the Petition for Cancellation be dismissed with prejudice.

Respectfully submitted,

s/Michael T. Murphy/s

Michael T. Murphy  
K&L GATES LLP  
P.O. Box 1135  
Chicago, IL 60690  
Telephone: (202) 778-9176  
Facsimile: (312) 827-8185

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Motion to Dismiss on the Pleadings was served this 26th day of May, 2009 in the following manner on:

**VIA U.S. FIRST CLASS MAIL**

Zane Murdock  
President  
NSM Resources Corporation  
P.O. Box 931162  
Los Angeles, CA 90093

I declare under the penalty of perjury that the foregoing is true and correct.

Date: May 26, 2009

  
Janice V. Hemphill